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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 175
134th General Assembly

Final Fiscal Note & Local Impact Statement

[Click here for H.B. 175's Bill Analysis](#)

Primary Sponsor: Rep. Hillyer

Local Impact Statement Procedure Required: No

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Highlights

- The Ohio Environmental Protection Agency (Ohio EPA) may experience a minimal annual loss in water quality certification revenue credited to the Surface Water Protection Fund (Fund 4K40).
- Local governmental agencies may experience an administrative cost savings related to the preparation of certain water quality certification applications.
- The Ohio EPA, the Department of Natural Resources (DNR), and the Department of Transportation may experience a slight increase in administrative costs to participate in the federal Interagency Review Team.
- Ohio EPA will experience a one-time increase in administrative costs to develop the new procedures related to certain mitigation standards. Ongoing implementation costs are uncertain.
- The bill creates a new property tax exemption for wetlands or water quality improvement projects, which may result in revenue losses for local governments. The extent of those tax revenue losses appears uncertain.
- The bill appropriates \$500,000 in FY 2022 to GRF line item 725520, Special Projects, under the DNR budget for weed harvesting efforts at Indian Lake.
- DNR's Division of Oil and Gas Resource Management may see an increase in administrative costs to develop a statewide underground injection control program for Class VI injection wells, used for carbon dioxide sequestration, in order to receive primary enforcement authority over those wells. Any costs would be paid from Fund 3P20 line item 725642, Oil and Gas – Federal, that is used by DNR to cover a portion of the personnel costs related to its oil and gas well plugging and drilling regulation programs.

Detailed Analysis

Ephemeral features

The bill's changes to the regulation of ephemeral streams and features include:

- Excluding ephemeral features that are not navigable waters of the United States (WOTUS) under the federal Clean Water Act (i.e., those over which the U.S. Army Corps of Engineers (U.S. Army Corps) lacks the jurisdiction to issue a dredge and fill permit) from regulation under Ohio's water pollution control programs, including the Section 401 water quality certification (WQC) program;
- Specifying that an ephemeral feature is a surface water flowing or pooling only in direct response to precipitation, such as rain or snow, and does not include a wetland;
- Maintaining the authority of the Ohio Environmental Protection Agency (Ohio EPA) to regulate ephemeral features that are WOTUS under the federal Clean Water Act;
- Establishing mitigation requirements, best management practices, and reporting and monitoring requirements that apply when these regulated ephemeral features will be impacted and a Section 401 water quality certification is required;
- Excluding particular types of projects, such as water quality improvement projects and small dredge and fill projects, from the bill's mitigation requirements, best management practices, and reporting and monitoring requirements; and
- Eliminating the Section 401 water quality certification review fee that applies to ephemeral streams (currently \$5 per linear foot of stream to be impacted, or \$200, whichever is greater).

Current regulation and fees

Under current law, "ephemeral streams" are subject to regulation by Ohio EPA and any impacts to them require a permit. Current law defines an ephemeral stream as a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that has a channel bottom that is always above the local water table. Until recently, these applications for certification were subject to the Section 401 water quality certification process. Section 401 certifications, as they are more commonly referred to, are those required under the federal [Clean Water Act Section 401: State Certification of Water Quality](#), which can be found on the U.S. EPA's website: www.epa.gov.

Under R.C. Chapter 6111, impacts to waters of the state without a permit are prohibited. To the extent that Ohio EPA is currently reviewing impacts to waters of the state, those applications are now subject to the "general permit for ephemeral streams." This specific type of permit carries a flat fee of \$200, which is credited to the Surface Water Protection Fund (Fund 4K40). The bill states that "waters of the state" does not include an ephemeral feature for which the U.S. Army Corps lacks the authority to issue a permit under 33 United States Code (U.S.C.) 1344.

With regard to ephemeral features, and as limited by the definition of "waters of the state," the bill clarifies that Ohio EPA continues to have enforcement authority over:

- Any discharge, deposit, dumping, or placement of wastes (R.C. Chapter 3734); and

- Any discharge, deposit, dumping, or placement construction and demolition debris (R.C. Chapter 3714).

Likewise, other state agencies will retain their regulatory authority over the discharge, deposit, dumping, or placement of waste, debris, or other materials in an ephemeral feature. The bill prohibits Ohio EPA from imposing any requirements beyond those specified with respect to any activity affecting such ephemeral features.

State fiscal effects

At the state level, the bill's ephemeral features provisions primarily affect Ohio EPA and the processing of WQC applications. Since federal rule changes have effectively, as a matter of practice, already removed certain fees related to the regulation of ephemeral streams/features, most notably the \$5 fee per linear foot of the stream, one aspect of the bill essentially codifies current practice, and thus would have no new fiscal impact on Ohio EPA's revenues. However, changes to the definition of an ephemeral stream may affect the number of WQC applications submitted each year. Since the number of WQC applications that include an ephemeral stream is relatively low, averaging less than 14 per year, any such annual impact on costs to review future applications or their corresponding fee revenue is likely to be minimal.

As state agencies are already exempt from WQC fees, there would be no fiscal impact on these entities. Of note is that certain definitional changes might create some uncertainty in the regulation of other areas of the law including concentrated animal feeding facilities, forest management, and Ohio EPA's Voluntary Action Program (VAP).

Local fiscal effects

While state agencies are exempt from WQC fees, local governmental agencies are not. Since June 2020, WQC applications carry a flat rate fee of \$200. This would continue under the bill, however, certification and review of portions of an application that specifically relate to an ephemeral stream/feature would no longer be required. This change could result in an administrative cost savings for those local governmental entities that seek certification after the bill becomes effective.

Federal Interagency Review Team

The bill requires the Director of Ohio EPA, the Director of Natural Resources (DNR), and the Director of Transportation to each appoint an agency designee and an alternate to the federal Interagency Review Team (IRT).

The IRT is an interagency group of federal, tribal, state, or local regulatory and resource agency representatives established pursuant to 33 Code of Federal Regulations (C.F.R.) 332.8(b) that reviews documentation for and advises the U.S. Army Corps district engineer on the establishment and management of a wetland mitigation bank, stream mitigation bank, in-lieu fee mitigation program, or permittee responsible mitigation. Under the federal Clean Water Act (CWA), the IRT reviews documentation and advises the U.S. Army Corps' district engineers on mitigation projects. Any increase in the operating costs for each of the three participating state agencies is likely to be negligible.

Mitigation standards

The bill alters current law requiring all substantive standards used by the Ohio EPA Director to evaluate Section 401 certification mitigation proposals to be adopted via rule. The bill requires certain considerations to be undertaken, specifically as they relate to the IRT (as noted above). The bill eliminates current law authorizing the Ohio EPA to use additional mitigation standards, criteria, etc. (without going through administrative procedures) in reviewing a mitigation proposal if Ohio EPA notifies the applicant in advance those additional standards will be considered as part of the review process. Ohio EPA is given 24 months to implement the proposed changes outlined in the bill. As a result, Ohio EPA will experience a one-time increase in administrative costs to develop the new procedures. Ongoing implementation costs are uncertain.

Property tax exemption

The bill creates a new property tax exemption for land classified as wetlands or for water quality improvement projects. In Ohio law, wetlands are areas inundated or saturated by water that support vegetation typically adapted for life in such soil conditions, and include swamps, marshes, bogs, and similar areas.¹ Under the bill, only property held by 501(c)(3) charitable organizations qualifies for the exemption. Such entities must be organized for the purpose of conservation of natural resources or improving water quality. In addition, the property must be either subject to an environmental response project, or subject to a nature water project funded from the H2Ohio Fund (Fund 6H20).

The environmental response project must be a plan or work performed for environmental remediation of real property or for protection of ecological features associated with real property, and conducted in response to a mitigation requirement under Ohio's Section 401 water quality certification program or isolated wetland program.² The Ohio EPA administers the state's water quality certification program under the federal Clean Water Act's (CWA) section 401, pertaining to discharge of dredged or fill material into streams, lakes, and wetlands.

A nature water project involves a natural water system, and will improve water quality by reducing levels of phosphorus, nitrogen, or sediment in the water. The project may involve research, technology, design, construction, best management practices, conservation, or maintenance, including creation, maintenance, or restoration of wetlands, flood plains, flood control systems, and buffers.

Under current law, nature preserves are tax exempt.³ A number of nature preserves are wetlands or include wetlands. Qualification for this exemption depends on the use of the land, not whether its owner is a charitable organization. In addition, the land must be dedicated to the state as specified in R.C. 1517.05, generally requiring that the dedication contain terms restricting the use of the land that adequately provide for its preservation and protection against modification or encroachment resulting from occupation, development, or other use that would destroy its natural or aesthetic conditions. The acceptability of the terms of each dedication in

¹ R.C. 6111.02(P), unchanged by the bill.

² Laws governing Ohio's isolated wetland program are specified in R.C. Chapter 6111.

³ Under R.C. 5709.09 and 1517.05.

protecting the land is evaluated by the Director of Natural Resources, whose approval must be obtained for the land to be tax exempt.

The bill may allow some wetlands to qualify for tax exemption that are not dedicated to the state as required under R.C. 1517.05. The extent of real property that is or may become taxable under current law, but that would be tax exempted under the bill, appears uncertain. Alternatively, the bill may allow landowners to gain tax exemption on wetlands without the restrictions on future use that would be imposed under a dedication conforming to the requirements in R.C. 1517.05.

The bill may also allow tax exemption for some nature water projects, the costs of which are paid from Fund 6H20. The Department of Agriculture, the Ohio EPA, and DNR use the fund for improvement and protection of state waterways.

The changes would apply to tax years ending on or after the effective date of the bill, so could go into effect in tax year 2022, payable in 2023. The extent of tax revenue losses under the bill appears uncertain.

Department of Natural Resources

Indian Lake weed harvesting appropriation

The bill appropriates \$500,000 in FY 2022 to GRF line item 725520, Special Projects, for DNR to provide weed harvesting operations at Indian Lake. Of that amount, DNR is to use \$250,000 to undertake this work. The agency is to use the remaining amount, up to \$250,000, to enter into a memorandum of understanding with the Indian Lake Watershed Project to support the Indian Lake Watershed Project's weed harvesting operations. The bill reappropriates any unexpended, unencumbered portion remaining in the line item at the end of FY 2022 for the same purposes in FY 2023.

Regulation of injection wells used for carbon dioxide sequestration

The bill requires DNR to begin working with the U.S. EPA and the U.S. Department of Energy to develop a statewide underground injection control program for Class VI injection wells in order to receive primary enforcement authority (primacy) in the state over wells used for carbon dioxide sequestration projects. Any costs resulting from this provision would be paid from Fund 3P20 line item 725642, Oil and Gas – Federal, which is used by DNR's Division of Oil and Gas Resources Management to cover a portion of the personnel costs related to its oil and gas well plugging and drilling regulation programs. Fund 3P20 receives federal grant funds from the U.S. EPA's Underground Injection Control Program. Currently, the state has regulatory primacy of Classes I to V injection wells.